



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0202]

RIN 1625-AA00

Safety Zone; East Passage Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones but will only enforce one, based on the local weather conditions the day of the event for navigable waters of the East Passage, Narragansett Bay, RI during The Ocean Race marine event on May 20, 2023. The safety zone is needed to safeguard mariners from the hazards associated with high-speed, high-performance sailing vessels competing in inshore races on the waters of the East Passage, Narragansett Bay, RI. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Southeastern New England, or a designated representative.

DATES: This rule is effective from noon through 5 p.m. on May 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0202 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Christopher Matthews, Waterways Management Division, Sector

Southeastern New England, U.S. Coast Guard; telephone 401-435-2348, email

Christopher.S.Matthews@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Southeastern New England
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 3, 2023, the Ocean Race committee notified the Coast Guard that they would be conducting a sailboat race from noon through 5 p.m. on May 20, 2023. The sailboat race will take place in the vicinity of the East Passage in Narragansett Bay, RI, near the Newport Pell Bridge.

The Captain of the Port Sector Southeastern New England (COTP) has determined that potential hazards associated with the sailboat race would be a safety concern for anyone attempting to transit within East Passage in Narragansett Bay, RI. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest.

The details of this event were not known to the Coast Guard in sufficient time to publish an NPRM. Delaying the effective date of this rule to wait for a comment period

to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the sailing event. The expeditious implementation of this rule is in the public interest because it will help ensure the safety of event participants, spectators, waterway users, and surrounding vessels.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with this world-wide sailing event.

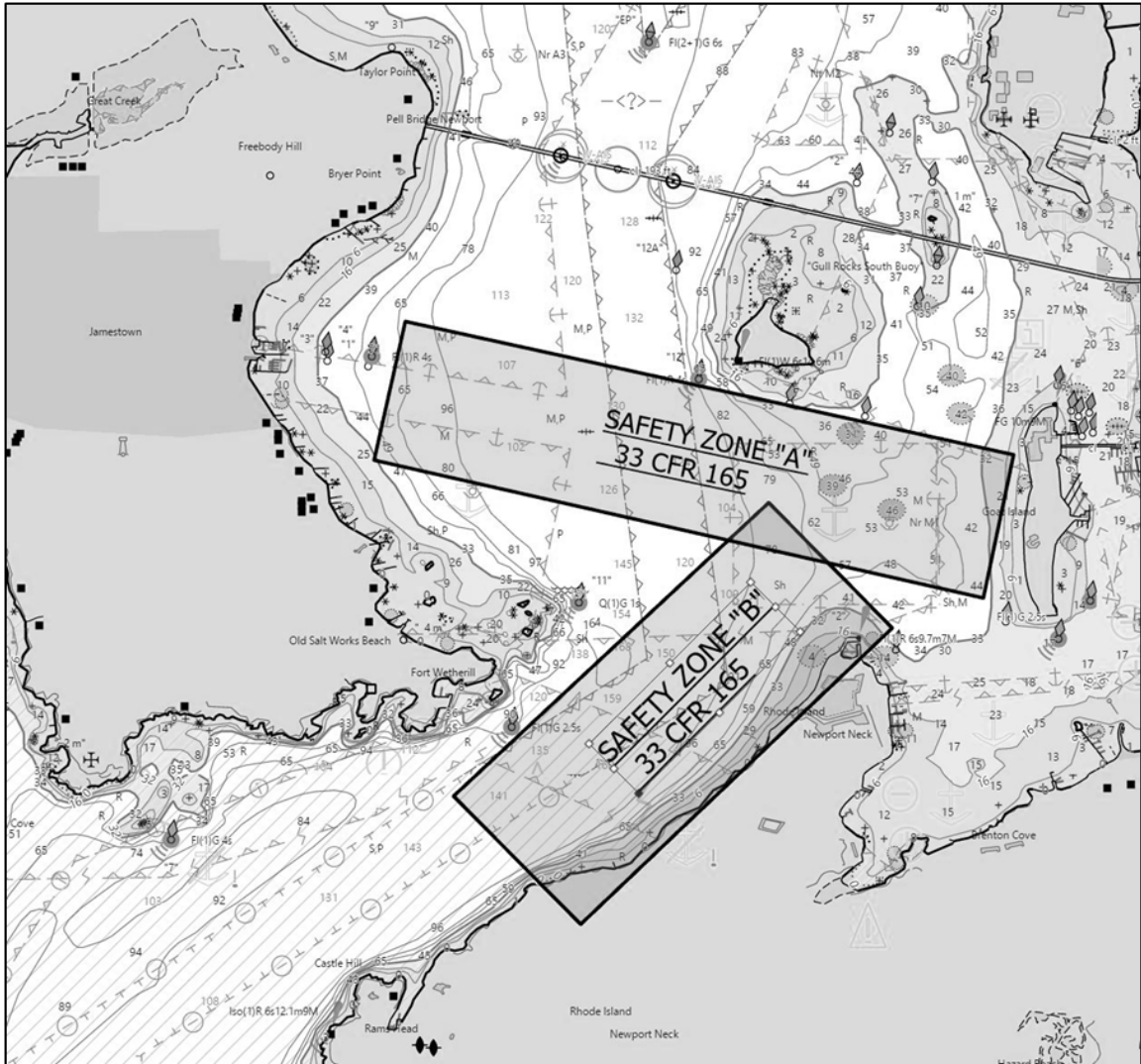
III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that The Ocean Race presents a potential safety concern to vessels, people, and the navigable waters of the East Passage of Narragansett Bay in the vicinity of Newport, R.I. This event is part of a world-wide race, and it is expected to generate national and international media coverage, in addition to spectators on a number of recreational and excursion vessels. As a result, this rule is needed to ensure the safety of vessels and the navigable waters in the East Passage before, during, and after the scheduled event.

IV. Discussion of the Rule

The Coast Guard is establishing two temporary safety zones, in conjunction with The Ocean Race, to ensure the protection of the maritime public and event participants from the hazards associated with large-scale marine events. Although we are establishing two temporary safety zones, Safety Zone "A" and Safety Zone "B", only one safety zone will be enforced based on the local weather conditions the day of the race. We will make notice of exactly what safety zone will be enforced via broadcast notice to mariners. The

safety zone, either Safety Zone “A” or Safety Zone “B”, will be enforced on May 20, 2023, from 12:00 until 5:00 p.m. Safety Zone “A” encompasses all navigable waters located within the following latitude and longitude points, 41.497N, 071.359W; 41.490N, 071.361W; 41.483N, 071.330W; 41.490N, 071.329W. Safety Zone “B” encompasses all navigable waters located within the following latitude and longitude points, 41.473N, 071.356W; 41.467N, 071.350W; 41.482N, 071.335W; 41.488N, 071.341W.



(Chartlet showing Safety Zone “A” and Safety Zone “B”, East Passage, Narragansett Bay, RI.)

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. We expect the adverse economic impact of this rule to be minimal. Although this regulation may have some adverse impact on the public, the potential impact will be minimized for the following reasons: the safety zone will be in effect for a maximum of five hours for one day; vessels will only be restricted from the zone in the East Passage of Narragansett Bay during those limited periods when the races are actually ongoing; during periods when there is no actual racing (e.g., racing vessels transiting from the pier to the racing site, downtime between races, etc.) vessels may be allowed to transit through the safety zone with the permission of the COTP or the COTP’s representative.

Notification of The Ocean Race and the associated safety zone will be made to mariners through the Local Notice to Mariners. The morning of the race the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding which zone will be enforced.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting only 5 hours over a one-day period that will prohibit entry into a portion of the East Passage of Narragansett Bay. There are two potential areas, Safety Zone “A” and Safety Zone “B”. Safety Zone “A” encompasses all navigable waters located within the following latitude and longitude points, 41.486N, 071.343W; 41.482N, 071.335W; 41.469N, 071.350W; 41.475N, 071.358W. Safety Zone “B”

encompasses all navigable waters located within the following latitude and longitude points, 41.498N, 071.361W; 41.492N, 071.362W; 41.483N, 071.334W; 41.491N, 071.330W. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T01-0202 to read as follows:

§ 165.T01-0202 Safety Zone; The Ocean Race, East Passage, Narragansett Bay, RI.

(a) *Location.* The following areas are a safety zone, Safety Zone “A” and Safety Zone “B”. Safety Zone “A” encompasses all navigable waters located within the following latitude and longitude points, 41.486N, 071.343W; 41.482N, 071.335W;

41.469N, 071.350W; 41.475N, 071.358W. Safety Zone “B” encompasses all navigable waters located within the following latitude and longitude points, 41.498N, 071.361W; 41.492N, 071.362W; 41.483N, 071.334W; 41.491N, 071.330W. Only one safety zone will be enforced based on the local weather conditions the day of the race. We will make notice of exactly what safety zone will be enforced via Broadcast Notice to Mariners via marine channel 16 (VHF-FM).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Southeastern New England (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM radio channel 16 or phone at 508-457-3211. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced on May 20, 2023, from noon until 5 p.m.

Dated: May 11, 2023.

C. J. Prindle,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Sector Southeastern New England.

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